IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 13.07.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Writ Petition No.23327 of 2001

S.Goparam … Petitioner

Vs.

1. The Inspector General,
Central Industrial Security Force,
South West Sector,
RCF Complex, Chembur,
Mumbai-400074.

2. The Deputy Inspector General,
Central Industrial Security Force,
Southern Zone, D Block, Rajaji Bhavan,
Besant Nagar,
Chennai-600 090.

3. The Commandant,
CISF Unit, NLC,
Neyveli. … Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records relating to the impugned proceedings of the first respondent in No.V-11014/(1)/07/WZ/LC/SWS/01/7583, dated 10.11.2001, and the order of the second respondent in No.V-15014(1)/I/2KI/L&R (SZ)/4328, dated 21.05.2001, and quash the same.

For Petitioner : Mr.T.N.Sugesh

For Respondents : Mr.K.Veeraraghavan,
Senior Central Government Standing Counsel.

O R D E R

P.SATHASIVAM, J.

Aggrieved by the Order of the second respondent - Deputy

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Inspector General, Central Industrial Security Force, Chennai-90, dated 21.05.2001; and the show cause notice, dated 10.11.2001, of the first respondent – Inspector General, Central Industrial Security Force, Mumbai; the petitioner has filed the above Writ Petition to quash both the orders on various grounds.

2. The case of the petitioner is briefly stated hereunder,

According to him, he was initially appointed as Constable on 01.07.1989 in the Central Industrial Security Force (CISF), NLC, Neyveli. On 19.12.1999, he was on 'B' shift duty from 13.00 hours to 21.00 hours at the GWC Store Gate, Neyveli Lignite Corporation. After completion of his duty hours, he handed over the duty to his reliever who was on 'C' shift duty. Everything was in tact when he handed over duty. The store key was kept with the officials of the NLC and not with the CISF. Subsequently, on 20.12.1999, when the store was opened by the Chief Engineer, Electrical, NLC, at 09.30 hours, theft of certain materials was noticed. However, all the doors, windows and the locks were seen intact. A police complaint was lodged. No mention was made in the General Diary Entry that the theft had occurred during the duty hours of the petitioner on 19.12.1999. The stolen materials were subsequently recovered by the police.

Subsequently, a Charge Memo was issued to the petitioner on 15.05.2000 and the same was later cancelled by order dated 17.07.2000. Thereafter, the third respondent-Commandant, CISF Unit, NLC, Neyveli, issued another charge-memo dated 18.07.2000 containing a charge that he failed to safeguard the NLC undertaking property while on 'B' shift duty on 19.12.1999 from 13.00 hrs to 21.00 hrs, due to which, a theft of property worth Rs.6,20,000/- was reported on 20.12.1999 and that it amounted to dereliction of duty and irresponsibility towards assignment. The petitioner submitted a reply, denying the charge framed against him. One R.Manavalan, Assistant Commandant, was appointed as Enquiry Officer to enquire into the charge framed against the petitioner. Though there was no evidence to prove the charge framed against the petitioner, yet, the Enquiry Officer submitted a report, holding the charge as proved. Copy of the said report was furnished to the petitioner by proceedings of the Disciplinary Authority dated 17.10.2000, whereupon, he submitted his explanation against the findings of the Enquiry Officer on 27.10.2000. On receipt of the explanation and, after examining the evidence, the Disciplinary Authority/third respondent held that it was not established that the theft took place during his duty hours on 19.12.1999 while he was on 'B' shift duty; and concluded that the charge framed against him could not be proved beyond doubt. However, after observing that awarding a major penalty would not be justified, he imposed a punishment of "withholding of future increments for two years, which will not have the effect of postponing further increments of pay" and regularised the period of suspension from 29.12.1999 to 16.10.2000 as on duty for

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all purposes in and by his order dated 04.11.2000. The petitioner did not prefer any appeal, however, the appellate authority, viz., the Deputy Inspector General (R2)/CISF took up the case for *suo motu* review and issued a show cause notice by his proceedings dated 14.03.2001, stating that the punishment imposed by the Disciplinary Authority is lenient, and called upon the petitioner to show cause as to why the punishment already imposed should not be enhanced to that of reduction in pay by three stages from Rs.3425/- to Rs.3200/- in the time scale of pay of Rs.3150-75-3950-80-4590 for a period of two years, which will have the effect of postponing future increments, and to regularise the period of suspension as Dies-Non. He submitted his reply to the show cause notice on 31.3.2001. However, the second respondent, by order dated 21.05.2001, enhanced the punishment as proposed in the show cause notice. Aggrieved by the said enhancement of punishment, he preferred an appeal to the first respondent/Inspector General, CISF, on 05.07.2001. However, the first respondent, instead of considering the appeal filed by the petitioner against the enhancement of punishment, has issued show cause notice dated 10.11.2001 (impugned proceedings), calling upon him to show cause as to why the punishment should not be further enhanced to that of dismissal from service. Questioning the same, the petitioner has filed the present Writ Petition.

3. The third respondent filed a counter affidavit on behalf of the respondents, wherein, he denied all the allegations made in the affidavit. It is stated that the respondents, by virtue of the power conferred under the Central Industrial Security Force Act, 1968; and the Central Industrial Security Force Rules, 1969; after taking note of the gravity of the charge, imposed an appropriate punishment, hence, there is no merit in the Writ Petition.

4. Heard Mr.T.N.Sugesh, learned counsel for the petitioner and Mr.K.Veeraraghavan, learned Senior Central Government Standing Counsel.

5. In order to understand the claim of both the parties, it is useful to refer to the article of charge framed against the petitioner, which reads as under:-

" STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST No.891400790 CONSTABLE S.GOPARAM OF CISF UNIT NLC NEYVELI (T.N.)

ARTICLE-1

"No.891400790 Constable S.Goparam of CISF Unit NLC Neyveli was deployed in 'B' shift duty on 19.12.99 from 1300 hrs to 2100 hrs., at GWC (Electrical) of Mines-I. During his duty he

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failed to safeguard the Undertaking property due to which a theft of Undertaking property worth Rs.6,20,000/- reported on 20.12.99 morning. This act on his part tantamounts to severe dereliction of duties, gross remiss and highly irresponsible towards his assignment." Hence the charge.

Sd./- …….
COMMANDANT,
CISF UNIT NLC (N)"

The petitioner submitted his reply, denying the charge. Not satisfied with the explanation, one R.Manavalan, Assistant Commandant, was appointed as Enquiry Officer on 08.08.2000. It is not in dispute that the petitioner was afforded with opportunity in the enquiry proceedings. The Enquiry Officer submitted the Enquiry Report on 10.10.2000 holding that due to carelessness on the part of the petitioner and lack of responsibilities towards his assignment, a theft of undertaking property worth Rs.6,20,000/- was reported on 20.12.1999. It is also not in dispute that the Enquiry Report was forwarded to him and the petitioner submitted his explanation to the same on 27.10.2000. The third respondent, by order dated 04.11.2000, after going into the charge, entire enquiry proceedings, explanation of the petitioner etc., concluded that the charge levelled against him could not be proved beyond doubt. However, after finding so and observing that awarding of a major penalty will not be justified; in exercise of the powers conferred upon him under Rule-29(A) Schedule-II read with Rule-31(e) of CISF Rules, 1969; the third respondent imposed a punishment of withholding of petitioner's future increments for two years, which will not have the effect of postponing his further increments of pay and also ordered that the period of suspension from 29.12.1999 to 16.10.2000 will be treated as on duty for all purposes. It is useful to refer the following conclusion arrived by the third respondent,

" 7. After analysing both the side of prosecution and defence, I have observed that, the prosecution side failed to establish the charge as levelled against the charged member. ....."

The following conclusion in para No.8 is also relevant:-

" 8. Since the charge levelled against the charged member could not be proved beyond doubt, I am taking a lenient view this time."

6. Having found that the charge levelled against the Officer has

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not been proved, it is not understandable as to how the third respondent armed himself with an authority to impose any punishment much less lesser punishment. Now, let us consider the action taken by the second respondent – Deputy Inspector General, CISF, Southern Zone, Chennai. The second respondent, in his notice, dated 14.03.2001, *suo motu* reviewed the case of the petitioner and, after finding that the punishment imposed by the Disciplinary Authority is lenient and not commensurate to the gravity of the offence committed by him, called upon the petitioner to show cause why reduction in pay by three stages from Rs.3425/- to Rs.3200/- in the time scale of pay of Rs.3150-75-3950-80-4590 for a period of two years, which will have the effect of postponing his future increment, should not be imposed to meet the ends of justice. In the same notice, there was also a proposal to regularise the suspension period as Dies-non.

7. Learned counsel appearing for the petitioner questioned the action of the second respondent on two grounds, viz.,

> (a) on the relevant date, he is not the authority competent to review and enhance the punishment suo motu,
>
> (b) the show cause notice, dated 14.03.2001, refers only lesser punishment and proposes to impose higher punishment forgetting that the Disciplinary Authority has concluded that the only charge framed against the petitioner could not be proved/substantiated.

8. Coming to the first ground of attack, it is brought to our notice that on the date, viz., 14.03.2001, when the second respondent took up the case for *suo motu* review under Section 9 (3) of the CISF Act, only the Central Government had the power to review and not the second respondent. The said provision, viz., Section 9(3) of the CISF Act, 1968, reads as follows:-

> " 9. Appeal and revision.--(1)
> .....
> .....
> (2) .....
> (3) The Central Government may call for and examine the record of any proceeding under Sec.8 or under sub-section (2) of this section and may make such inquiry or cause such inquiry to be made and subject to the provisions of this Act may, pass such order thereon as it thinks fit:'

9. The above provision makes it clear that only the Central Government has the power to review and pass appropriate orders

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including modifying the order of the Disciplinary Authority. Inasmuch as the petitioner had not preferred any appeal against the order of the Disciplinary authority, in the light of sub-Section-3, the second respondent did not have the power under the said provision to take up *suo motu* review, hence, the proceedings were without jurisdiction. To put it clear, on the relevant date, viz., on 14.3.2001, as per the provisions stood then, the Central Government alone had the power to take up *suo motu* review and the show cause notice issued for enhancement of the punishment by the second respondent cannot be sustained.

10. Coming to the second contention, we have already extracted the conclusion of the Disciplinary Authority holding that the only charge levelled against the petitioner has not been proved, in such circumstances, we are of the view that there is no question of imposing punishment either leniently or moderately. Even if the second respondent or any other authority having jurisdiction wants to impose a higher punishment, before setting at motion any of their proceedings in that regard, the petitioner must be afforded an opportunity with reference to the same by way of show cause notice. Here, in the show cause notice issued by the second respondent, the only reason made (that is available at page 59 of the typed set) is that the punishment imposed by the Disciplinary authority is lenient and is not commensurate to the gravity of the offence committed by the petitioner. The same proceeds as if the Disciplinary Authority has accepted the finding of the Enquiry Officer, took a lenient view and imposed a lesser punishment. In the absence of any reason, based on which the second respondent differed from the decision of the Disciplinary Authority, the show cause notice, dated 14.03.2001, which speaks only about 'lesser punishment' cannot be held to be a valid notice in the eye of law. As rightly pointed out, the second respondent failed to appreciate that the finding was in favour of the petitioner and the charge was not proved; and that punishment cannot be enhanced merely because the charge is serious. Punishment can only be imposed on the basis of the material evidence in support of the charge and inasmuch as the finding of the Disciplinary Authority clearly states that the charge is not proved, we are of the view that enhancement of the punishment by the second respondent cannot be accepted. In view of the above infirmities in the order of the second respondent, the subsequent order of the first respondent, proposing to enhance the punishment to that of dismissal from service, cannot be sustained.

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11. In these circumstances, the impugned proceedings of the first respondent dated 10.11.2001 and the order of the second respondent dated 21.5.2001 are quashed. The petitioner is entitled to all service and monetary benefits. Writ Petition is allowed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

To

1. The Inspector General,
Central Industrial Security Force,
South West Sector,
RCF Complex, Chembur,
Mumbai-400 074.

2. The Deputy Inspector General,
Central Industrial Security Force,
Southern Zone, D Block, Rajaji Bhavan,
Besant Nagar, Chennai-600 090.

3. The Commandant,
CISF Unit, NLC,
Neyveli.

+1cc to Mr.T.N.Sugesh, Advocate Sr 30118
+1cc to Mr.K.Veeraraghavan,Advocate Sr 30352

NG (CO)
km/20.7.

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